

March 18, 1996

HOME
BUILDERS
ASSOCIATION
OF MARYLAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Telecommunications Services - Inside Wiring, Customer
Premises Equipment
CS Docket No. 95-184

HAND DELIVERED

Dear Mr. Caton:

The Home Builders Association of Maryland (HBAM) has serious concerns regarding mandatory access to multiple unit buildings by telecommunications providers. HBAM, with its Apartment Builders & Owners Council and Commercial Builders Council, represent over 1200 businesses, including residential and commercial multiple use building owners and management companies.

Mandatory access to the private property of another would be a taking by the government in violation of the Fifth Amendment of the United States Constitution. Any regulation allowing a telecommunications provider to emplace its cable in, on, or over a private multi-tenant building is a governmental taking, which must be compensated. Loretto v. TelePompTer Manhattan, 458 U.S. 420 (1982). Any attempt by the commission to compel the owners of multi-unit buildings to allow access to, and occupation of, their buildings by third-party telecommunications providers and their facilities would violate the owner's rights under the Fifth Amendment. The proposed FCC rule does not require compensation to the property owner.

Unlimited access to private multi-housing properties would also interfere with the building's management. The owners and managers of a multi-unit dwelling have obligations and responsibilities regarding tenants, residents and visitors. Included in those obligations are safety and security.

Buildings are required to meet certain safety codes imposed by the State and the local jurisdiction. By allowing third parties, who are not responsible to the owners, access to and control of the building and elements in a building's construction could have adverse affects to the safety of its occupants. For instance, if a cable company drills a hole in an area that requires a high level of fire resistance, the integrity of that area has been compromised by the hole. The owner and

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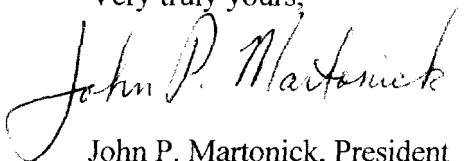
manager are primarily responsible for any damage caused by the defective condition of the wall. The companies punching holes are unlikely to even consider repairing the holes, much less repairing them in a way that would maintain the integrity of the area.

The owners and managers of multi-unit dwellings also have security concerns on behalf of their tenants or occupants. By allowing unlimited access to unlimited companies, the burden of maintaining security of the premises is overwhelming, and virtually impossible. Representatives of the telecommunications companies may be a security risk in themselves, as well as an impediment to strict observance of property management policies. The owner has no control of who gains access to the property, and therefore have no control over their workers. Further, a worker who is otherwise trustworthy, may prop open a door or let unauthorized persons enter the property. These individuals would not be familiar with the policies of the subject property regarding security.

Any building only has a finite amount of space available for telecommunications facilities. If there is unlimited access to the property to install such equipment, the property would eventually be unable to accommodate any additional services. If this occurs, the property owner and its tenants would be unable to use the property in accordance with his/her desires.

The proposed FCC regulation will unnecessarily impair property owners' use and ability to manage their properties. Access to telecommunication services, like other services provided by property owners, are market driven. A tenant, whether commercial or residential, enters into a lease with the owner of the subject property. If the services that the tenant requires are not available, they have the ability to negotiate for those services to be made available. If the owner of the property refuses to provide such services, the tenant is under no obligation to rent the property. Since property owners are in the business of renting their property, to remain competitive, they will provide the services the market demands. There is no need to require property owners to provide access to every vendor who wants to place their equipment in the owner's property. It is unconstitutional, the market does not demand it, and it is not good policy.

Very truly yours,

A handwritten signature in cursive script, reading "John P. Martonick". The signature is written in dark ink and is positioned above the printed name.

John P. Martonick, President
Home Builders Association of Maryland